

Mediation in Mental Health Dispute Resolution Technical Requirement

Public Act 55 of 2020, amends the Michigan Mental Health Code to change the mediation definition to state that “Mediation means a confidential process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable resolution. A mediator does not have authoritative decision-making power.” Prior to enactment, the mental health code did not allow for mediation services until the Office of Recipient Rights investigative report was completed. The revision allows a recipient or recipient’s representative to request mediation at any time when there is a dispute related to service planning or the services, supports provided by a Community Mental Health Services Program (CMHSP), or services, supports provided by a CMHSP contracted provider. The statute also allows that other available dispute resolution options provided through the CMHSPs local dispute resolution, local appeals process, Medicaid Fair Hearing, and filing a recipient rights complaint may occur simultaneously with mediation. The parties involved may agree to suspend the other dispute resolution processes unless prohibited by law or precluded by a report of an apparent or suspected violation of rights delineated in Chapter 7. Disputes around services defined in Chapter 2, 330.1206 are open to mediation.

Rights of the Recipient or Recipient’s Representative

- 1) Has the right to request mediation at any time for a dispute related to service planning or providing services or supports by a CMHSP or CMHSP contracted provider.
- 2) Has the right to be notified of their right to request and have access to mediation at the time services or supports are initiated and annually after that.
- 3) Has the right to request mediation at the same time a local dispute resolution, local appeal or Medicaid Fair hearing process is occurring.
- 4) Has the right to request and have other dispute resolution processes suspended unless prohibited by law or precluded by a report of an apparent or suspected violation of rights as delineated in Chapter 7.
- 5) Has a right to have mediation services provided by a neutral third party contracted through and paid for by the Department.

Responsibilities of the CMHSP

- 1) Must notify a recipient or recipient’s representative of the right to request mediation at the time of services or supports are initiated and annually after that.
- 2) Must notify a recipient or recipient’s individual representative of the right to request mediation at the time that the CMHSPs or service provider’s local dispute resolution process, local appeals process, or state Medicaid fair hearing is requested.

- 3) Must designate a staff person(s) from customer services as a point of contact for the mediation center in mediation matters.
- 4) The CMHSP or contracted service provider must participate in mediation if mediation is requested.

Responsibilities of the Mediation Organization

- 1) Must provide mediators that are trained in effective mediation technique and mediator standard of conduct.
- 2) Must provide mediators that are knowledgeable in the laws, regulations, and administrative practices relating to providing behavioral health services and supports.
- 3) Must ensure that mediators are not involved in any manner with the dispute or with providing services or supports to the recipient.
- 4) Must record the request for mediation and begin mediation within 10 business days after the recording.
- 5) Must ascertain if an alternative dispute resolution process is currently ongoing and notify the process administrator of the request for mediation. The parties may agree to voluntarily suspend other dispute resolution processes, unless prohibited by law or precluded by a report of an apparent or suspected violation of rights delineated in Chapter 7.
- 6) Must complete the mediation within 30 days after the date mediation was recorded. May extend mediation for an additional 30 days but not to exceed 60 days.
- 7) Must prepare a legally binding document outlining the terms of the agreement if the dispute is mutually resolved and provide the signed document to all parties (signed by all parties) within 10 days after the end of the mediation process.
- 8) If the dispute is not resolved, must provide a copy of a document indicating that the dispute could not be resolved within the process and provide a copy to all parties within 10 business days after the end of the mediation process.
- 9) Must provide a report of aggregate data and outcomes to the Department every 6 months or as the Department deems appropriate.

Responsibilities of the Department

- 1) Must contract with 1 or more mediation organizations experienced in coordinating statewide case intake and mediation service delivery through local community dispute resolution centers.

- 2) Must review and evaluate the effectiveness and efficiency of mediation in resolving disputes relating to planning and providing services and supports by the community mental health services program and its service providers.

Services Defined in 330.1206

- 1) The purpose of a community mental health services program shall be to provide a comprehensive array of mental health services appropriate to conditions of individuals who are located within its geographic service area, regardless of an individual's ability to pay. The array of mental health services shall include, at a minimum, all of the following:
 - a) Crisis stabilization and response including a 24-hour, 7-day per week, crisis emergency service that is prepared to respond to persons experiencing acute emotional, behavioral, or social dysfunctions, and the provision of inpatient or other protective environment for treatment.
 - b) Identification, assessment, and diagnosis to determine the specific needs of the recipient and to develop an individual plan of services.
 - c) Planning, linking, coordinating, follow-up, and monitoring to assist the recipient in gaining access to services.
 - d) Specialized mental health recipient training, treatment, and support, including therapeutic clinical interactions, socialization and adaptive skill and coping skill training, health and rehabilitative services, and pre-vocational and vocational services.
 - e) Recipient rights services (cannot be mediated as processes are defined in statute)
 - f) Mental health advocacy.
 - g) Prevention activities that serve to inform and educate with the intent of reducing the risk of severe recipient dysfunction.
 - h) Any other service approved by the department.
- 2) Services shall promote the best interests of the individual and shall be designed to increase independence, improve quality of life, and support community integration and inclusion. Services for children and families shall promote the best interests of the individual receiving services and shall be designed to strengthen and preserve the family unit if appropriate. The community mental health services program shall deliver services in a manner that demonstrates they are based upon recipient choice and involvement and shall include wraparound services when appropriate.

Mediation and Assisted Outpatient Treatment (AOT)

- 1) If a recipient has been petitioned into court on an AOT matter, and before the court has issued an order, a CMHSP recipient can request mediation to discuss their CMHSP services and it will be covered by the Behavioral Health Mediation Services (BHMS) grant. If a probate judge were to order an AOT to mediation, it can be mediated, however, it will not be covered by the BHMS grant. The qualifier to be covered under BHMS grant is:
 - a) The CMHSP recipient or their legal representative must request the mediation
- 2) The mediation would not stop the AOT petition from being processed in court unless there is a formal adjournment of the petition by the judge. To effect the adjournment, the recipient or their

attorney would notify the court that the petition has gone to mediation. The courts can also provide the BHMS information to the CMHSP recipient as this may save considerable time, the recipient and CMHSP could then discuss the services. The court may record the mediated agreement and dismiss the petition, however, that is up to the court.

- 3) Once a probate judge has granted an AOT court order, mediation cannot be used as a step to dispute the court's order of AOT services, or the services identified in the court order. An AOT order does not prevent the recipient or legal representative in expressing their preferences and desires in the planning and providing of services, supports in the person-centered planning process, which must be acknowledged, documented during this process and in the written plan of service, therefore, disputes raised by the recipient or legal representative regarding preferences, wishes, desires can be mediated.

Where Mediation Does Not Apply

- 1) Mediation does not apply to disputes regarding medical necessity determinations.
- 2) Once a probate judge has granted an AOT court order, mediation cannot be used as a step to dispute the court's order of AOT services, or the services identified in the court order.
- 3) Mediation does not apply to recipient rights services or to any disputes regarding recipient rights services.
- 4) However, the parties may agree to voluntarily suspend other dispute resolution processes, unless prohibited by law or precluded by a report of an apparent or suspected violation of rights delineated in Chapter 7.